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10/758,854	01/16/2004	Sreenivas Addagatla	042933/271712	6954

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EXAMINER	
WHIPPLE, BRIAN P	
ART UNIT	PAPER NUMBER
2452	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/758,854	ADDAGATLA ET AL.	
	Examiner	Art Unit	
	BRIAN P. WHIPPLE	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, and 26-27 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments filed 2/18/09 have been fully considered, but they are not persuasive.

3. Applicant argues (page 7 of the amendment) that Hsu fails to disclose a throttle value less than or equal to the at least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate.

The Examiner respectfully disagrees. The Applicant appears to be equating the average network load to the third rate and then arguing the throttle value is not less than or equal to this. Assuming, the characterization by the Applicant is correct, the argument ignores the language of the claims which state the throttle value need only be less than or equal to "at least one" of the three data transfer rates.

As can be seen in the prior art of Hsu, the network is capable of three data transfer rates of 10 Mbps, 100 Mbps, and 1 Gbps (Col. 3, ln. 48-50; Col. 4, ln. 59-63). In Hsu, the local network interface card (NIC) is capable of the first data transfer rate (i.e., 10 Mbps) and is

also capable of 100 Mbps (the second data transfer rate) and 1 Gbps (the third data transfer rate) (Col. 3, ln. 43-50). The far-end NIC is also capable of the second data transfer rate (100 Mbps) as well as the first and third data transfer rates (Col. 4, ln. 59-63). The network itself is capable of transmitting data between the local and remote NICs at a third data transfer rate of 1 Gbps (Col. 4, ln. 59-63).

The data throttle in Hsu is the highest common linking speed, which is negotiated during the autonegotiation process (Col. 4, ln. 56-63). The data throttle value is clearly less than or equal to one of the three data transfer rates. In fact, the data throttle value will always be equal to one of the three data transfer rates of 10 Mbps, 100 Mbps, and 1 Gbps (as these are the only three values capable of being set between the local and remote NICs).

4. Applicant argues (page 7) that Hsu teaches away from the claims in that the linking speed may be increased. However, as pointed out in the preceding paragraph, the throttle will always be equal to one of the three data transfer rates. The claims themselves do not actually claim "decreasing" as is implied by stating the word "increasing" is opposite to the intent of the claims.

5. Applicant argues (page 8) that Hsu fails to disclose obtaining the transfer data rate of a network in between the first and second hosts during a communication start-up process. The

Examiner respectfully disagrees. All three data transfer rates are known to the local NIC, remote NIC, and the intermediate network equipment. Hsu further discloses that the link speeds are obtained through the negotiation (communication start-up) process (Fig. 5, item 506 and Col. 1, ln. 40-45). This interpretation is consistent with what was well known in the art at the time of Applicant's invention; to not be aware of the three data transfer rates during autonegotiation (a communication start-up process) of the highest common linking speed would render effective networking communication impossible.

6. Applicant argues (page 8) that the network transfer data rate is not obtained from a signaling message. However, as is discussed above, the three data transfer rates and the data throttle value are all being communicated between the local NIC, the remote NIC, and the intermediate networking equipment. Therefore, the information is clearly present in signaling messages in the network.

7. Finally, Applicant argues (page 9) regarding the language of "during a communication start-up process." The Applicant is directed to paragraph 5 above for a discussion of this aspect of the prior art as it relates to the claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 4, 16, 19, 22, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsu et al. (Hsu), U.S. Patent No. 7,127,521 B2.

10. As to claim 1, Hsu discloses a first host capable of transmitting multiplexed data at a first data transfer rate (Col. 3, ln. 43-50);

a second host capable of receiving multiplexed data at a second data transfer rate (Col. 4, ln. 56-63);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 4, ln. 59-63); and

a data throttle, wherein the data throttle limits the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data

transfer rate, and the third data transfer rate, and wherein the first, second, and third data transfer rates are obtained during a communication start-up process from a signaling message (Col. 3, ln. 43-50; Col. 4, ln. 56 – Col. 5, ln. 11).

11. As to claims 4, 16, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claim 1 above, in view of what was well known in the art.

14. As to claim 12, Hsu discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice (See MPEP 2144.03) is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

15. Claims 5-7, 17-18, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claims 1, 16, 19, and 26 above, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

16. As to claim 5, Hsu discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through

the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

17. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

18. As to claim 7, Hsu and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

19. As to claims 17, 20, and 27, the claims are rejected for similar reasons to claim 6 above.

20. As to claims 18 and 21, the claims are rejected for similar reasons to claim 7 above.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

22. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (9:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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5/29/09

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